IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 744 OF 1987

M/s.Greaves Cotton & Co.Ltd.,)
1, Dr.V.S. Gandhi Marg,)
Bombay 400 023.)...Applicant

V/s.

The Commissioner of Income-tax,)
Bombay City-IV, Bombay.)...Respondent

Mr.S.J. Mehta for Applicant.
Mr.A.N. Kotangle, Senior Counsel for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 11, 2005.

ORAL JUDGMENT (PER A.S. AGUIAR, J.) :-

1. The following question of law, at the instance of the Assessee viz. M/s.Greaves Cotton & Co.Ltd., is referred for the opinion of this Court under Section 256(1) of the Income Tax, Act, 1961, arising out of the order of the Tribunal in ITA No.3611/Bom/83 for the Assessment Year 1986-87.

> "Whether, on the facts and in the circumstances of the case, the expenditure incurred on maintenance of the transit quarter at Carmichael Road, Bombay, for accommodating its employees

visiting Bombay from outstations for purposes of business could be disallowed u/s 37(4) of the I.T.Act, 1961 treating it as a guest house ?"

2. In the above case, the ITO had held that the expenditure incurred on salary, general maintenance, repairs, electricity, gas and on eatables and provisions in the guest house was disallowable under Section 37(4) of the IT Act, 1961.

3. The assessee company had rented the premises at Carmichael Road, Bombay, for Rs.24000/- per annum. Admittedly, the premises were not used as a holiday home for the employees. The place was used for providing shelter to its employees from outside Bombay visiting Bombay for the purpose of business. The company has several branches outside Bombay. Since it was difficult to obtain hotel accommodation for the employees who happen to be visiting Bombay on short notice, the company had allowed the guest house to be used by its employees coming to Bombay for the purpose of short stay and in connection with the business of the company. The

ITO disallowed the claim but the Commissioner of Income Tax (Appeals) allowed it following orders passed in the earlier years.

4. In appeal, the Appellate Tribunal ruled that the expenditure was not allowable on a plain reading of Section 37(4) of the IT Act and hence, allowed the departmental appeal and set aside the order of CIT (Appeals) by restoring the order of ITO. Reliance was placed by the department on the Judgement of **Karnataka High Court in the case of N.G.E.F.Ltd., 153 ITR 197** wherein the High Court held that under Section 37(4), the expenditure on guest house had to be disallowed unless it could be shown that it was used exclusively as a holiday home by the employees of the assessee. In view of the said Judgment, the Tribunal disallowed the claim of the assessee under Section 37(4).

5. Before this Court, the learned Advocate for the department has relied upon the judgment of this Court in the case **Raja Bahadur Motilal Poona Mills Ltd. V/s. Commissioner of Income-Tax, (1995) 212 ITR 175**, holding

that under Section 37(4)(i) of the IT Act, no allowance shall be made in respect of any expenditure incurred by an assessee on maintenance of any residential accommodation in the nature of a guest house after February 28, 1970 and since the assessment year in question is 1976-77, the same was not allowed. Reliance was placed on the decision of the Gujarat High Court in the case of **Commissioner of Income-Tax V/s. Gujarat Industrial Development Corporation reported in (2001) 170 CIT 19**, wherein the Court observed as follows :--

> "Any accommodation exclusively used by the assessee for the purpose of providing accommodation to its employees during their visit on official tour cannot be considered as guest house for the purpose of sub-s. (4) of s. 37. The words 'guest house' in its ordinary sense is suggestive of any accommodation maintained for extending hospitality to a 'guest' or an outside visitor and not providing shelter and/or food to inhouse persons for the purpose of business itself. Employees of a

business house cannot be considered as guest of the business. As the scheme suggests that in order to consider any accommodation by the assessee as guest house an element of extending, some extra additional hospitality other than to meet obligatory necessity is essential to meet the requirement of business. The second proviso to sub-s. (4) to above is also suggestive of the fact that an accommodation maintained by the assessee for the purpose of extending convenience and comfort to its employees on leave and while not on official duty has been exempted from the purview of the operation of sub-s. (4). The extension of such facility during leave is obviously part of extending hospitality may be on account of business consideration but obviously no part of obligatory expenditure to be incurred by the employer. An accommodation maintained for use of employees while on leave and occupation is not for business undoubtedly falls in category of a guest house. To keep it out of rigours of

sub-s. (4) specific provision was needed. The very facts that expenses incurred for maintenance of such holiday home are kept outside the purview of sub-s. (4) indicates that expenses incurred to maintain an accommodation exclusively to be used by the employees while they are on duty and not otherwise was not intended to be brought within the purview of sub-s. (4) of s. 37. In the aforesaid circumstances, on the premises that the accommodation was available exclusively for the purpose of its employees while they were on duty in Bombay, the Tribunal was justified in its finding that the accommodation in question is not a guest house within the meaning of s. 37(4)."

6. Again, reference is made to the decision of this Court in the case of **Commissioner of Income-Tax V/s. Ocean Carriers Pvt.Ltd., (1995) 211 ITR 357** wherein this Court held as follows :-

> "Sub-section (5) of section 37 of the Income-tax Act, 1961, which has been inserted by the Finance Act, 1983, with retrospective effect from April 1, 1979, has clarified that accommodation maintained by an assessee to provide lodging or boarding and lodging to any person including any employee or a director or the holder of any office in the assessee-company would be in the nature of a guest house within the meaning of sub-section (4) of section 37."

7. However, in the said case, the Court held that the assessee company had treated these flats as its own guest houses and since these guest houses were not maintained exclusively as a holiday home for the employees of the assessee company, the assessee company was not entitled to allowance under Section 37(4) in respect of any expenditure on maintenance thereof incurred after February 28, 1970, nor to any depreciation allowance.

8. From the facts of the present case, it is seen

that the house was not being maintained as guest house exclusively for its employees but as shelter for the purpose of accommodating its employees working in is branches outside Bombay while visiting Bombay from outstation.

9. Before this Court, learned Advocate for the assessee has contended that the employees were visiting Bombay for the business of the company and therefore, the question referred to this Court for opinion by the Tribunal has been redrafted to clarify that the transit quarters were meant for accommodating outstation employees visiting "for the purpose of business". It is contended that the expenditure is allowable as it was for the purpose of business or profession under Section 37(1) and not under Section 37(4).

. Section 37(1) reads as follows :-

> "Any expenditure (not being expenditure of the nature described in sections 30 to 36 and section 80VV and not being in the nature of

> capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

10. It is the case of the assessee that the transit quarters were being maintained exclusively for the purpose of the business of the company as they were meant for providing transit accommodation to its employees from outstation visiting Bombay in connection with business of the assessee company.

11. No doubt, the case before the authorities below was for allowing expenditure under Section 37(4) of the IT Act and on consideration of the provision under Section 37(4), the authorities rightly held that the expenditure was not allowable. However, the question referred by the Tribunal to this Court for its opinion, specifically makes mention that the transit quarters were meant for accommodating employees visiting from

outstation for the purposes of business. The expenditure on maintenance of these quarters would, therefore, be allowable under Section 37(1). The Tribunal has, it seems, inadvertently mentioned Section 37(4) instead of Section 37(1) as the relevant section for deduction of expenses on maintenance of quarters meant for employees of the company coming to Bombay on business of the company. It seems reasonable in the circumstance to entertain the assessee's case as one under Section 37(1) and not under Section 37(4). No doubt before the ITO the assessee had not claimed that the employees were visiting Bombay for business purposes and sought deduction under Section 37(4). But from the question of law now referred by the Tribunal for opinion of the Court, it is clear that the assessee company is seeking the deduction under Section 34(1) as the employees were coming to Bombay on business of the company. It is not disputed that the employees of the assessee posted at its branches outside Bombay were visiting Bombay on business of the company and were themselves accommodated in the said quarters which were in the nature of transit quarters.

12. In this view of the matter, the claim for allowance of expenditure under Section 37(1) is required to be allowed and the question reframed to read as expenditure allowable under Section 37(1) and not 37(4). Accordingly, the question is answered in favour of the assessee and against the revenue.

. Reference, accordingly, stands disposed of.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**